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February 5, 2010

**VIA ELECTRONIC FILING**

The Honorable Sue L. Robinson  
United States District Court  
844 North King Street, Lock Box 31  
Wilmington, DE 19801

**Re: Callaway Golf Company v. Acushnet Company**  
**C.A. No. 06-91-SLR**

Dear Judge Robinson:

This letter concerns the pending *Daubert* motion (D.I. 284) directed to Callaway's damages expert, Mr. Napper, and in particular responds to Mr. Halkowski's letter to the Court dated January 16, 2010. (D.I. 550).

Mr. Halkowski cites additional authority to the Court regarding Callaway's position on the pending *Daubert* motion. He cites the CAFC decision in *i4i Ltd. Partnership v. Microsoft Corp.*, which he characterizes as rejecting an attempt to use a *Daubert* challenge to exclude patent damages expert testimony.<sup>1</sup> *i4i* involved a *Daubert* challenge to a damages expert's calculation of a reasonable royalty. While *i4i* may be relevant to the reasonable royalty portion of Mr. Napper's report, that is not the central issue in Acushnet's motion.

In order to complete the record on this issue, and given the passage of time since these briefs originally were filed, Acushnet requests leave for each side to provide short (no more than 5 pages each) letter briefs to the Court to update their positions on the *Daubert* issue. Acushnet believes that such letter briefs may narrow the issues and promote the final resolution of this motion.

We contacted Callaway regarding this matter. Callaway advises that it does not believe that further briefing is necessary on this issue. However, if the Court agrees to allow it, Callaway would not oppose a procedure where Acushnet files a brief of not more than five pages and Callaway thereafter responds with a brief of the same length. Acushnet would be prepared to file its brief within two days of receiving permission from the Court, and proposes that Callaway's response would be due four business days later.

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<sup>1</sup> \_\_\_ F.3d \_\_\_, 2009 WL 4911950 (Fed. Cir. Dec. 14, 2009), Slip Op. available at <http://www.cafc.uscourts.gov/opinions/09-1504.pdf>.

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Counsel are available at the Court's convenience if Your Honor has any questions about our request.

Respectfully,

*/s/ Richard L. Horwitz*

Richard L. Horwitz

RLH/msb

952581/30030

cc: Clerk of the Court (via hand delivery)  
Counsel of Record (via electronic filing)